

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

ICON HEALTH & FITNESS, INC., a
Delaware corporation,

Plaintiff,

vs.

FISHER-PRICE, INC., a Delaware
corporation; and EXPRESSO FITNESS
CORPORATION, a Delaware corporation,

Defendants.

MEMORANDUM DECISION AND
ORDER GRANTING MOTION TO
DISMISS COUNT II OF
DEFENDANT’S COUNTERCLAIM

Case No. 1:08-CV-10 TS

The Court, having considered Plaintiff’s Motion to Dismiss Count II of Defendant’s Counterclaim, and the submissions and arguments of the parties in connection therewith, GRANTS the Motion and FINDS and ORDERS as follows:

1. Defendant Espresso Fitness Corp. (“Espresso”) has failed to prove that there is presently an actual case or controversy with respect to infringement of United States Patent No. 7,166,062 (the “’062 Patent”).

2. Under the circumstances presented, it would be inequitable to exercise declaratory

judgment jurisdiction over Count II of “Expresso Fitness Corporation’s . . . Counterclaims for Declaratory Judgment” (“Counterclaim,” Docket No. 33).

3. Count II of the Counterclaim is dismissed for lack of subject matter jurisdiction.

4. The Court declines to exercise any jurisdiction it might have with respect to Count II of the Counterclaim.

It is therefore

ORDERED that Plaintiff’s Motion to Dismiss Count II of Defendant’s Counterclaim (Docket No. 35) is GRANTED.

DATED April 27, 2011.

BY THE COURT:



TED STEWART
United States District Judge